

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,	)	
425 Third Street, S.W., Suite 800	)	
Washington, DC 20024,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
HOMELAND SECURITY,	)	
601 South 12th Street	)	
Arlington, VA 22202,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Judicial Watch, Inc. brings this action against Defendant United States Department of Homeland Security to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**PARTIES**

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 425 Third Street, S.W., Suite 800, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest

mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at 601 South 12<sup>th</sup> Street, Arlington, VA 22202. Defendant has possession, custody, and control of public records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On December 18, 2012, Plaintiff sent a FOIA request to U.S. Immigration and Customs Enforcement (“ICE”), a component of Defendant, seeking access to:

Any and all records maintained, archived, or stored, electronically or otherwise, by Agent Edward G. Hamel of ICE’s Phoenix Field Office, concerning or relating to the number of kidnappings in the City of Phoenix, Arizona for the years 2007 and/or 2008.

6. By letter dated December 21, 2012, ICE acknowledged receiving Plaintiff’s request on December 21, 2012 and assigned the request reference number 2013FOIA7745. In addition, ICE informed Plaintiff that, pursuant to 5 U.S.C. §552(a)(6)(B), it had granted itself a 10-day extension of time in which to make a determination on Plaintiff’s request.

7. ICE was required to determine whether to comply with Plaintiff’s request within 20 days after its receipt of the request, excepting Saturdays, Sundays, and legal public holidays, pursuant to 5 U.S.C. § 552(a)(6)(A). Pursuant to this same provision, ICE also was required to notify Plaintiff immediately of the determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency. Because ICE had granted itself an extension of time pursuant to 5 U.S.C. §552(a)(6)(B), its determination was not due until February 6, 2013 at the latest.

8. As of the date of this Complaint, ICE has failed to make a determination about whether it will comply with Plaintiff's request, notify Plaintiff of any determination, or notify Plaintiff of his right to appeal any adverse determination to the head of the agency. Nor has ICE produced any records responsive to the request, indicated when any responsive records will be produced, or demonstrated that responsive records are exempt from production.

9. Because ICE failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)-(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA, 5 U.S.C. § 552)**

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

12. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of

attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 25, 2013.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Paul J. Orfanedes  
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*Attorneys for Plaintiff*